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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 BRENDA SUE LYNCH,

11 Defendant.

NO: 2:14-CR-0168-TOR-2

ORDER GRANTING MOTION TO
WITHDRAW GUILTY PLEA

12
13 BEFORE THE COURT is Defendant's Motion for Withdrawal of Guilty
14 Plea (ECF No. 1363). This matter was heard without oral argument. The Court—
15 having reviewed the record and the parties' completed briefing—is fully informed.

16 BACKGROUND

17 The Grand Jury issued an 83-count Indictment on December 2, 2014. ECF
18 No. 1. Defendant was charged in four counts of that Indictment; three counts of
19 bank fraud and one count of conspiracy. The Indictment also contained Notice of
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1 Forfeiture allegations seeking a money judgment for the proceeds of the crimes
2 charged. On December 3, 2014, Defendant was arraigned on the Indictment.

3 On June 4, 2015, Defendant appeared before the Court and entered a plea of
4 guilty to one count of Conspiracy to Commit Bank Fraud in violation of 18 U.S.C.
5 §§ 1344, 1349. The Court accepted Defendant's guilty plea and set a sentencing
6 hearing for October 7, 2015. ECF No. 834. On August 11, 2015, at the request of
7 Defendant, the Court appointed her new counsel. On September 11, 2015,
8 Defendant moved to continue her sentencing hearing for 60 days to allow her new
9 counsel adequate time to determine whether a motion to withdraw her guilty plea is
10 appropriate. ECF No. 1135. Sentencing was then scheduled for December 10,
11 2015. ECF No. 1138. On December 4, 2015, Defendant once again moved to
12 continue her sentencing hearing, ECF No. 1350, and on December 8, 2015 filed the
13 instant motion to withdraw her guilty plea, ECF No. 1363.

14 Defendant contends newly discovered evidence, evidence that a key witness
15 recanted her incriminatory statements that pinned significant criminal conduct on
16 the Defendant, is a fair and just reason to allow her to withdraw her guilty plea.
17 Specifically, Defendant points to a report that documents what a co-defendant said
18 during the execution of a search warrant at her house on January 29, 2014. ECF
19 No. 1363-3. According to this report, the co-defendant implicated Griffith and
20 Defendant Lynch as the two individuals manufacturing counterfeit checks in this

1 case. The co-defendant claimed Lynch printed these checks with a laptop and a
2 printer and made 90% of the checks at her residence. She estimated that Lynch
3 manufactured 40-50 checks or 30% of all the checks manufactured in this case. *Id.*
4 This report was turned over by the government in discovery and according to
5 Defendant Lynch, was one of the reasons she pleaded guilty.

6 However, the co-defendant participated in another interview on February 9,
7 2015. According to the written report of that interview, the co-defendant recanted
8 her prior statements about Defendant Lynch's involvement and affirmatively stated
9 that she never saw her manufacture checks and that Lynch tended to brag about
10 many things she could not really do. ECF No. 1363-2. When asked who was
11 responsible for manufacturing checks, she stated she believed both Griffith and
12 Lynch were, but she never saw Lynch manufacture checks in person. *Id.* This
13 report was not disclosed to Defendant Lynch until August 2015, two months after
14 she pleaded guilty. ECF No. 1363-1.

15 DISCUSSION

16 A defendant may withdraw his guilty plea after it is accepted but before
17 sentencing if he demonstrates "a fair and just reason for requesting the
18 withdrawal." Fed. R. Crim. P. 11(d)(2)(B). This standard "is applied liberally."
19 *United States v. Garcia*, 401 F.3d 1008, 1011 (9th Cir. 2005). "Fair and just
20 reasons for withdrawal include inadequate Rule 11 plea colloquies, *newly*

1 *discovered evidence*, intervening circumstances, or any other reason for
2 withdrawing the plea that did not exist when the defendant entered his plea.” *Id.* at
3 1011(citation omitted, emphasis in original). Evidence is sufficient if it “could
4 have at least plausibly motivated a reasonable person in [the defendant's] position
5 not to have pled guilty had he known about the evidence prior to pleading.” *Id.* at
6 1011-12. As the Garcia Court firmly explained, the “generous ‘fair and just
7 reason’ standard does not require that the defendant show that the new evidence
8 exonerates him or that there is a reasonable probability he would not have been
9 convicted had the case gone to trial.” *Id.* at 1011. Nor should the Court decide the
10 merits of the proffered defense, those are for a jury to decide.

11 Looking at the evidence in the light of a reasonable person in the defendant’s
12 position, the Court finds the undisclosed evidence could have motivated her to
13 change her position. *See Garcia*, 401 F.3d at 1011-12.

14 The government’s reasons for opposing withdrawal are not persuasive.
15 First, the government contends Defendant fails to establish a “reasonable
16 probability” that the undisclosed evidence would have caused her to go to trial.
17 ECF No. 1386 at 2. The standard is not reasonable probability, but rather whether
18 the evidence could plausibly motivate a reasonable person. *See Garcia*, 401 F.3d
19 at 1011-12.

1 Next, the government recites to what it believes is overwhelming evidence
2 of Defendant's guilt. ECF No. 1386 at 2-10. Again however, that is not the test.
3 The Court is not charged with weighing the evidence at this stage of the case. The
4 government next focuses on the thoroughness of the Rule 11 plea hearing. Again
5 however, Defendant is not attacking the voluntariness or procedural aspect of her
6 plea, she is relying on the newly discovered evidence that was withheld by the
7 government. The government's argument misses the mark. Next, the government
8 questions the timing of Defendant's motion. However, as recounted above, once
9 the undisclosed evidence was provided to her, she promptly sought new counsel,
10 and new counsel promptly began investigating Defendant's claims. The Court
11 does not find Defendant tactically delayed pursuit of her motion, but rather
12 promptly sought relief through independent counsel. Finally, the government tries
13 to distinguish *Garcia* and claims there was no *Brady* violation, likening the second
14 report to merely impeachment material. The second report was not merely
15 impeachment evidence, but rather affirmative statements that the co-defendant
16 never witnessed Defendant Lynch manufacturing counterfeit checks. The
17 government's recitation of the habeas standard of review for *Brady* violations is
18 inapposite to the Rule 11 standard for the withdrawal of a guilty plea.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**


2 Defendant's Motion for Withdrawal of Guilty Plea (ECF No. 1363) is
3 **GRANTED.** A separate jury trial scheduling order will follow.

4 The District Court Clerk is hereby directed to enter this Order and provide
5 copies to counsel, the United States Probation Office and the United States
6 Marshal.

7 **DATED** January 6, 2016.



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THOMAS O. RICE
UNITED STATES DISTRICT JUDGE